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be made by the regional director or the Chief of the Grading Branch.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

§ 70.105 Procedures for appeal gradings.

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of containers selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 70.80.

(c) Poultry or rabbits in an unfrozen state must be adequately protected and kept in good condition until the appeal grading is performed.

(d) Overwraps on frozen poultry or rabbits shall be removed from all birds or rabbits in the sample prior to appeal grading for quality or to determine the class.

(e) When the appeal is based on grading or class determination factors, each frozen carcass shall be defrosted prior to conducting the appeal grading. Whether defrosting poultry or rabbit carcasses for other types of appeals will be required by the appeal grader, will depend upon the reason for the appeal.

[41 FR 23681, June 11, 1976; 41 FR 24693, June 18, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 71 FR 42014, July 24, 2006]

§ 70.106 Appeal grading certificates.

Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal grader

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assigns a different grade to the lot, the existing grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.

SANITARY REQUIREMENTS, FACILITIES, AND OPERATING PROCEDURES

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

(a) The requirements for sanitation, facilities, and operating procedures in official plants shall be the applicable provisions stated in 9 CFR part 381 for poultry, and for rabbits the requirements shall be the applicable provisions stated in 9 CFR part 354.

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

[41 FR 23681, June 11, 1976. Redesignated at 42 FR 32514, June 27, 1977, and further redesignated at 46 FR 63203, Dec. 31, 1981, as amended at 51 FR 17281, May 9, 1986; 63 FR 40630, July 30, 1998]

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AUTHORITY: 7 U.S.C. 1622 and 1624.

SOURCE: 49 FR 18724, May 2, 1984, unless otherwise noted.

DEFINITIONS

§ 75.1 Meaning of words.

Words used in the regulations in this part in the singular form shall be

deemed to import the plural and vice versa, as the case may demand.

§ 75.2 Terms defined.

For the purpose of these regulations unless the context otherwise requires, the following terms shall be construed, respectively, as follows:

(a) *Act* means the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*).

(b) *Regulations* means the regulations in this part.

(c) *Department* means the United States Department of Agriculture (USDA).

(d) *Secretary* means the Secretary of the United States Department of Agriculture, or any officer or employee of the Department to whom authority has been delegated to act in the Secretary's stead.

(e) *Administrator* means the Administrator of the Agricultural Marketing Service (AMS) of the Department, or any other officer or employee of AMS to whom authority has been delegated to act in the Administrator's stead.

(f) *Division* means the Warehouse and Seed Division (WSD), AMS.

(g) *Director* means the Director of the Division or any other officer or employee of the Division to whom authority has been delegated to act in the Director's stead.

(h) *Person* means any individual, partnership, association, business trust, corporation, entity, or any other organized group of persons, whether incorporated or not.

(i) *Seed* means any agricultural or vegetable seed.

(j) *Interested Party* means any person financially interested in a transaction involving seed.

(k) *Applicant* means an interested party who requests any inspection service with respect to seed.

(l) *Authorized agent* means an agent to whom authority to represent a person or government agency has been given by that person or government agency through delegation, contract or cooperative agreement, or other means.

(m) *Memorandum of Understanding* means a written plan between AMS and a State for carrying out their separate

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activities in a project of mutual interest to the parties involved.

(n) *Inspector* means a licensed employee of a State authorized pursuant to a Memorandum of Understanding or an employee of the Department authorized by the Director, to draw samples of seeds, seal containers, inspect records, test seeds for quality, issue certificates and reports, and bill for services.

(o) *Inspection* means sampling seeds, sealing containers, testing seeds for quality and reviewing records.

(p) *Appeal inspector* means an inspector or other person designated or authorized by the Division to perform appeal inspections under the Act and regulations in this subpart.

(q) *Certificate* means a certificate issued under the Act and the regulations in this subpart.

ADMINISTRATION

§ 75.3 Authority.

The Director is charged with the administration of the provisions of the regulations and the Act insofar as they relate to the subject matter of the regulations, under the supervision of the Secretary and the Administrator.

§ 75.4 Federal and State cooperation.

Pursuant to the Act, the Administrator is authorized to cooperate with the appropriate State agencies in carrying out provisions of the Act and these regulations through Memoranda of Understanding. The Memorandum of Understanding shall specify the duties to be performed by the parties concerned with each party directing its own activities and utilizing its own resources.

§ 75.5 Regulations not applicable for certain purposes.

The regulations do not apply to the inspection of grain in the United States under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*), except to the extent that official grain samples received from the Federal Grain Inspection Service (FGIS) shall be examined for the presence of specified weed and crop seeds upon the request of FGIS.

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§ 75.6 Nondiscrimination.

The conduct of all services under these regulations shall be accomplished without discrimination as to race, color, religion, sex, or national origin.

INSPECTION

§ 75.7 Inspection in accordance with methods prescribed or approved.

Inspection of seed shall be rendered pursuant to these regulations and under such conditions and in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA).

§ 75.8 Basis of service.

The regulations provide for inspection services pursuant to the Act. Seeds shall be inspected in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA); provided, that limitations in these rules respecting maximum lot size will not be observed and, provided further, that certification as to origin may be based on examination of records and certification of other seed certifying agencies.

§ 75.9 Who may obtain service.

An application for inspection service may be made by any interested party or his authorized agent.

§ 75.10 How to make application.

An application for service shall be confirmed in writing and addressed to the Federal Seed Laboratory, WSD, AMS, USDA, Beltsville, Maryland 20705.

§ 75.11 Content of application.

An application for service shall include the following information; (a) The date of application; (b) the kind and quantity of seed, and test(s) to be performed; (c) the methods and instructions for the inspection of the seed (either Association of Official Seed Analysts (AOSA) or International Seed Testing Association (ISTA) rules); (d) the name and address of the applicant and, if made by an authorized agent;

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and (e) such further information relating to the inspection as may be required.

§ 75.12 When application deemed filed.

An application shall be deemed filed when received by the Division or the Federal Seed Laboratory.

§ 75.13 When application may be rejected.

Any application for service may be rejected by the Director (a) for non-compliance with the Act or the regulations relating to applications for service in this subpart, or (b) when it is not practicable to provide the service. Each such applicant shall be promptly notified in writing.

§ 75.14 When application may be withdrawn.

An application may be withdrawn at any time before the requested service is rendered. The applicant will remain responsible for payment of expenses incurred in connection therewith as provided in § 75.44.

§ 75.15 Authority of agent.

Proof of authority of any person making an application as an agent may be required in the discretion of the official receiving the application.

§ 75.16 Accessibility of seeds.

Each lot of seed for which a lot inspection is requested shall be placed by the applicant so as to permit the entire lot to be sampled and a representative sample to be obtained as required.

§ 75.17 Testing.

Upon request by the applicant, tests may be made for kind, variety, germination, purity, weed seeds, disease pathogens, treatment, moisture, and other special tests, or any combination thereof for which prescribed methods of testing are established. The tests shall be in accordance with the methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA) as requested by the applicant.

§ 75.18 Sampling.

Sampling, when requested by the applicant, shall be in accordance with the

methods of either the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA), depending upon the test method requested by the applicant.

§ 75.19 Seed lot inspection.

A lot inspection shall be made by obtaining a representative sample from a specified quantity of seed identified with a distinguishing mark or number to appear on all containers in the lot, and performing such test(s) as may be requested by the applicant. The identification mark or number must be approved by the inspector and will appear on the certificate to be issued.

§ 75.20 Submitted sample inspection.

A sample inspection shall be made by testing a sample of seed submitted by an applicant for inspection.

§ 75.21 Grain sample inspection.

A sample inspection shall be performed by examining official grain samples received from FGIS to identify specified weed and crop seeds upon the request of FGIS.

§ 75.22 Form of inspection certificate.

Inspection certificates shall be approved by the Director as to their form. No correction, erasure, or other change shall be made in the information on a certificate.

§ 75.23 Issuance of inspection certificate.

After an inspection has been completed, an inspection certificate shall be issued showing the results of the inspection in accordance with paragraph (a) or (b) of this section.

(a) *Lot inspection certificate.* A lot inspection certificate shall be issued to include the name of the inspector sampling and sealing the seed lot, the analysis results from testing the sample, the identifying mark or number which has been approved by the inspector to appear on each container in the seed lot, and any other factual information pertinent to the inspection.

(b) *Sample inspection certificate.* A sample inspection certificate shall be issued to show the results of the inspection of a sample of seed or grain submitted by an interested party. Each

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sample inspection certificate shall state the results of the inspection that applies only to the sample described in the certificate.

(c) *General authorization to issue certificates.* Certificates for inspections may be issued by any inspector authorized by the Director to perform the inspection covered by the certificate.

(d) *Name requirements.* The name and signature of the person who issued the inspection certificate shall be shown on the certificate. The original certificate must be signed, and the signature or a stamped facsimile shall be shown on each copy.

§ 75.24 Disposition of inspection certificate.

Upon issuance, the original and one copy of each inspection certificate shall be delivered or mailed to the applicant or otherwise delivered or mailed in accordance with the applicant's instructions. One copy of each inspection certificate shall be filed in the Federal Seed Laboratory. In case of a lost or destroyed certificate, a duplicate thereof labeled as such may be issued under the same number, date, and name.

§ 75.25 Issuance of corrected certificate.

(a) If any error is made in an inspection, a corrected inspection certificate may be issued.

(b) The original and copies of the corrected certificate shall be issued as promptly as possible to the same interested persons who received the incorrect certificate.

(c) The corrected certificate shall supersede the incorrect inspection certificate previously issued. The corrected certificate shall clearly identify, by certificate number and date, the incorrect certificate which it supersedes.

(d) The original and all copies of the superseded incorrect certificate shall be obtained by the Director, if possible. If it is not possible to obtain the original and all copies of the superseded certificate, to the extent possible, all parties involved will be notified to prevent misuse of the superseded certificate and the corrected certificate so marked as to the outstanding certificate.

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APPEAL INSPECTION

§ 75.26 When appeal inspection may be requested.

A request for an appeal inspection may be made by any interested party regarding the results of an inspection as stated on an inspection certificate. Such request shall be made within thirty (30) days following the day on which an inspection certificate was issued.

§ 75.27 How to file an appeal.

Any request for an appeal inspection may be made orally or in writing to the Federal Seed Laboratory. If made orally, written confirmation is required. The applicant shall clearly state the reasons for requesting the appeal service. The original and all available copies of the certificate shall be returned to the appeal inspector assigned to make the appeal inspection.

§ 75.28 When a request for an appeal inspection may be withdrawn.

A request for an appeal inspection may be withdrawn by the applicant at any time before the appeal inspection is performed: *Provided*, that, the appellant shall pay any expenses incurred in connection with the appeal as provided in § 75.46.

§ 75.29 When an appeal may be refused.

A request for an appeal inspection may be refused if:

(a) The reasons for an appeal inspection are frivolous or not substantial;

(b) The quality or condition of the seed has been altered since the inspection covering the seed on which the appeal inspection is requested;

(c) The lot in question in a lot inspection is not or cannot be made accessible for sampling;

(d) The lot relative to which appeal inspection is requested cannot be positively identified by the inspection as the lot from which drawn samples were previously inspected in a lot inspection; or

(e) The application is not in compliance with the regulations; and

(f) Such applicant shall be notified promptly of the reason for such refusal.

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§ 75.30 Who shall perform appeal inspection.

An appeal inspection shall be performed by an inspector (other than the one from whose inspection the appeal is requested) authorized for this purpose by the Director.

§ 75.31 Appeal inspection certificate.

After an appeal inspection has been completed, an appeal inspection certificate shall be issued showing the results of such appeal inspection; and such certificate shall supersede the inspection certificate previously issued for the seed involved. Each appeal inspection certificate shall clearly identify the number and date of the inspection certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appeal inspection certificate and shall no longer represent the quality or condition of the seed described therein. The inspector issuing an appeal inspection certificate shall forward notice of such issuance to such persons as considered necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the inspector issuing the appeal inspection certificate. The appeal inspection certificate shall be marked as to the existence of the outstanding certificate. The provisions in the regulations concerning forms of certificates and disposition of certificates shall apply to appeal inspection certificates, except that copies of such appeal inspection certificates shall be furnished to all interested parties who received copies of the superseded certificate.

LICENSING OF INSPECTORS

§ 75.32 Who may become licensed inspector.

Any person nominated by a cooperating State and who is found to have the necessary qualifications may be licensed by the Director as an inspector to perform such duties of inspection as specified by the Memorandum of Understanding. Such a license shall bear the signature of an authorized employee of the Department. A licensed inspector shall perform duties pursuant to the regulations in accordance with

instructions issued or approved by the Director.

§ 75.33 Suspension or revocation of license of inspector.

Pending final action by the Administrator, the Director may suspend, whenever it is deemed that such action is necessary to assure that any service provided is performed properly, the license of any inspector, issued pursuant to the regulations by giving notice of such suspension to the respective licensee, accompanied by a statement of the reasons therefore. Within 7 days after receipt of notice and statement of reasons by a licensee, an appeal may be filed in writing with the Administrator supported by any argument or evidence as to why the license should not be suspended. After expiration of the 7-day period and consideration of such argument and evidence, the Administrator shall take such action as deemed appropriate with respect to a suspension or revocation.

§ 75.34 Surrender of license.

Upon termination of service as an inspector or suspension or revocation of such license, such licensee shall surrender the license immediately to the Federal Seed Laboratory.

SAMPLING PROVISIONS AND REQUIREMENTS

§ 75.35 Obtaining samples for lot inspections.

Samples of seed for lot inspections may be obtained by licensed inspectors or authorized employees of the Department.

§ 75.36 Representative sample.

No lot inspection sample shall be deemed representative of a lot of seed unless the sample (a) has been obtained by a licensed inspector or an authorized employee of the Department; (b) is of the size prescribed in the instructions; and (c) has been obtained, handled, and submitted in accordance with the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA) procedures.

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§ 75.37 Submitted samples.

Submitted samples may be obtained by or for any interested person. (Instructions for sampling seed may be obtained upon request to the Director or the Federal Seed Laboratory.)

§ 75.38 Lot inspections.

Each lot inspection shall be made on the basis of a representative sample obtained from that lot of seed by a licensed inspector or an authorized employee of the Department. Each lot of seed which is offered for lot inspection shall be sealed at the time of sampling in accordance with methods and procedures of the Association of Official Seed Analysts (AOSA) or the International Seed Testing Association (ISTA).

§ 75.39 Use of file samples.

(a) File samples which are retained by inspection personnel in accordance with the regulations may be deemed representative for appeal inspections: Provided, that (1) the samples have remained in the custody of the inspection personnel who certificated the inspection; and (2) the inspection personnel who performed the inspection and the inspection personnel who are to perform the appeal inspection determine that the sample was representative of the seed at the time of the inspection and that the quality or condition of the seed in the sample and in the lot has not changed since the time of the inspection.

(b) Upon request of the applicant, and if practicable, a new sample may be obtained and examined as a part of an appeal inspection.

§ 75.40 Protecting samples.

Inspection personnel shall protect each sample from manipulation, substitution, and improper or careless handling which would deprive the sample of its representative character from the time of collection until the inspection is completed and the file sample has been discarded.

FEES AND CHARGES

§ 75.41 General.

Fees and charges for inspection or certification services performed by

Federal employees shall cover the cost of performing the service. Fees shall be for actual time required to render the service.

(a) For each calendar year, AMS will calculate the rate for inspection or certification services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total AMS inspection or certification program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

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(2) *Operating rate.* The total AMS inspection or certification program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total AMS inspection or certification program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(c) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

[79 FR 67325, Nov. 13, 2014]

§ 75.42 Sampling and sealing.

(a) Fees for inspection services provided by licensed inspectors may be charged by States participating in the program at rates established by the individual States.

(b) When onsite inspection services are performed by Federal employees at the request of the applicant, charges will be based on the formulas in § 75.41.

[49 FR 18724, May 2, 1984, as amended at 79 FR 67325, Nov. 13, 2014]

§ 75.43 Laboratory testing.

Fees for testing each sample shall include the time required for actual testing, preparation of test records, issuing the certificate, and filing of samples and documents, with:

(a) Fees assessed based on the formulas in § 75.41.

(b) A minimum fee of 1 hour per sample for testing shall be charged.

(c) The fee for a preliminary report issued prior to completion of testing shall be assessed in accordance with paragraph (a) of this section.

[49 FR 18724, May 2, 1984, as amended at 67 FR 11384, Mar. 14, 2002; 79 FR 67325, Nov. 13, 2014]

§ 75.44 When application rejected or withdrawn.

When an application for inspection is rejected in accordance with § 75.13 or withdrawn in accordance with § 75.14, the applicant will be required to pay applicable fees for the time used by an inspector and other expenses incurred

in connection with such application prior to its rejection or withdrawal.

§ 75.45 Charge for appeals.

A charge of 1 hour shall be made for each appeal filed under § 75.26, and the fee for an appeal inspection shall equal the fee for the original inspection from which the appeal is taken, plus any charges for travel or other expenses incurred in performing the appeal: *Provided*, That when a material error in the certificate or sample from which the appeal is taken is found by the appeal inspector the charge and fee shall be waived.

§ 75.46 When appeal refused or withdrawn.

When an appeal is refused in accordance with § 75.29 or withdrawn in accordance with § 75.28, the applicant will be required to pay for the time used by the appeal inspector and other expenses incurred in connection with such appeal prior to its denial, dismissal, or withdrawal.

§ 75.47 For certificates.

A charge of \$13.00 per certificate will be made for copies of certificates other than those required to be distributed in § 75.23 and for the issuance of a duplicate certificate in accordance with § 75.24 and an appeal certificate in § 75.31.

[49 FR 18724, May 2, 1984, as amended at 56 FR 51320, Oct. 11, 1991; 58 FR 64101, Dec. 6, 1993; 60 FR 21035, May 1, 1995; 65 FR 15832, Mar. 24, 2000; 67 FR 11384, Mar. 14, 2002]

MISCELLANEOUS

§ 75.48 Identification number.

The Director may require the use of official identification numbers in connection with seed certificated or sampled under the Act. When identification numbers are required, they shall be specified by the Director and shall be attached to, or stamped, printed, or stenciled on the lot of seed certificated or sampled in a manner specified by the Director.

§ 75.49 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget

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pursuant to the Paperwork Reduction Act of 1980 is as follows: OMB Control No. 0581–0140.

[56 FR 51320, Oct. 11, 1991]